

REMARKS

The foregoing Amendment narrows the scope of the emulsion compositions recited in the claims so as to focus on Examples 4, 24-37, 43-50 and 52-61.

Applicants respectfully traverse the rejections made in the Office Action herein responded to and urge that the foregoing Amendment renders the cited references even more remote from what is claimed by Applicants.

Rejection under 35 U.S.C. § 112

Claims 17-19, 25-28 and 34-36 were rejected under the second paragraph of 35 U.S.C. § 112. The basis for this rejection was an alleged overlap in the esters recited for component (b) and component (d). In the newly presented independent Claims 37 and 39-42, there is no possible overlap in materials now included in these components.

Rejection over Bassam US Patent No. 5,849,264

In paragraph 6 of the Office Action, the Examiner rejects claims 17-19, 25-28 and 34-36 as obvious over Bassam U.S. Patent No. 5,849,264.

One of the principal features in Applicants' claimed invention is the ratio of component (d) to component (b). In Applicants' claims, the maximum amount of component (b) in the subject compositions is 1.0% and the maximum amount of component (d) is 10% of the amount of component (b). Thus, in terms of the entire composition, component (d) is present at a maximum amount of only 0.1%. The Bassam reference discloses polyglycerol esters and ethoxylated non-ionic emulsifiers (col. 2, lines 2-4) and oleic acid (col. 3, line 67). These would qualify as components (b) and (d). Applicants' claims are directed to methods for enhancing the unipolar charge imparted to droplets of an emulsion when said emulsion is discharged from an aerosol spray device. The key to enhancing the unipolar charge is the choice of component (b), the choice of component (d) and, very importantly, the ratio of (d) to (b). The Bassam reference does not recognize any particular properties as possibly resulting from a combination of "emulsifiers" falling within the parameters of Applicants' component (b) and "solvents" falling within Applicants' component (d). The reference discloses many examples of compositions comprising "surfactants" that fall within the definition of Applicants' component (b) but there are no specific examples showing any of Applicants' component (d). Thus, there is no

combination disclosed in the Bassam reference that would qualify as a mixture of Applicants' components (b) and (d). Needless to say, there is no indication of any ratio between said components. In these circumstances, Applicants' claims would not have been obvious over Bassam.

Rejection over Stopper US Patent No. 4,536,323

In paragraph 7 of the Office Action, the Examiner rejects Claims 17-19, 25-28, 34 and 35 as obvious over Stopper US Patent No. 4,536,323.

It is again respectfully pointed out that, whilst Stopper is concerned with methods for reducing the flammability of aerosols, Applicants are concerned with enhancing the electrostatic charge imparted to emulsion droplets discharged from an aerosol spray device. Applicants submit that Stopper is not a proper indication of obviousness. The Examiner acknowledges that Applicants have disclosed "some variation of the compositions of the reference" and asserts that "some variation of the properties [of the reference] would have been expected". However, we are not concerned with properties of the compositions disclosed in the reference. Applicants have disclosed and claimed methods which have no relationship to the methods disclosed in the reference. Applicants are concerned with enhancing the electrostatic charge imparted to droplets discharged from an aerosol spray device. As indicated in paragraphs 0002-0006 of the published application, charged particles improve the effectiveness of the products contained in the spray device. Stopper, on the other hand, is concerned only with matters of safety – in particular, reducing the flammability of spray emulsions.

The Examiner asserts that Applicants' claims set forth concentrations of the emulsifier package of about 1.0% of non-ionic surfactant and an anionic surfactant of 10% based on the non-ionic surfactant. This is not an unreasonable statement in itself since Applicants' component (d) may be sodium laureth sulfate. The Examiner notes that Claim 1 of the Stopper reference recites a minimum of 3% of a mixed surfactant system, with the implication that Applicants' "about 1%" would also include a concentration of "about 3%". Applicants contend that an upper limit of "about 1%" cannot be stretched to include an amount that is three times the recited 1%, particularly since the highest concentration of non-ionic surfactant – component (b) – disclosed in Applicants' specific examples is 1%. The basis for the Examiner's assertion that "about 1%" should include concentrations of about 3%, seems to be Applicants' statement – in

Paragraph 0010 of the published application – that Applicants' non-ionic surfactant can go up to about 10%. However, the Examiner appears to be losing sight of the fact that Applicants' obligation in this regard is to differentiate the claims being prosecuted, not to differentiate Applicants' broad disclosure. Therefore, there is no basis to assert that "about 1%" can include the 3% recited by the Stopper reference.

Rejection over Fox WO 99/21659 in view of Stopper or Bassam

In paragraph 8 of the Office Action, the Examiner has rejected all of the claims as obvious over WO 99/21659 in view of Stopper or Bassam.

In paragraph 0005 of the published application, reference is made to WO 97/28883 as describing an aerosol spray device constructed so that a unipolar charge is imparted to sprayed-out particles. The device disclosed in WO 99/21659 is similar and can be used in connection with the methods claimed by Applicants. Essentially, where Applicants' claims differ from the Fox disclosure is in the contents of the aerosol spray device. As noted in paragraph 0007 of Applicants' published application, one of the features of Applicants claimed invention is that, by careful selection of the components of the composition contained in the aerosol spray device, it is possible to enhance the charge imparted liquid droplets without requiring any special features in the construction of the aerosol spray head. As previously pointed out, the content of Applicants' compositions would not have been obvious over Bassam because of the ratio of Applicants' components (b) and (d). And, as previously pointed out, the content of Applicants' compositions would not have been obvious over Stopper because, inter alia, the Stopper reference is to a utility having no relationship to Applicants' utility.

The Examiner points to the paragraph of WO 99/21659 beginning at page 7, line 32. The reference indicates that changes in product formulations can affect charging levels and says that a mixture or an emulsion of hydrocarbon and water will carry a higher charge-to-mass ratio than either water alone or a hydrocarbon alone. Applicants are not claiming the broad concept that changes in formulation can influence the amount of a unipolar charge. Rather, Applicants' claims are directed to the specific concept that a combination of a non-ionic surfactant of component (b) with component (d) in the specific recited limited ratio will enhance unipolar charge. This is not disclosed in WO 99/21659 or in Bassam or in Stopper. Thus, combining Fox

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with either Bassam or with Stopper is an improper combination and, even if combined, would not lead to Applicants' claimed methods.

CONCLUSION

In view of the foregoing Amendment and these remarks, it is believed that all claims now in this Application are in condition for allowance. Favorable action is therefore requested.

Please apply any other charges or credits to deposit account 06-1050, reference 08291-0719001.

Respectfully submitted,

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